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ROCHE PALO ALTO LLC and ALLERGAN, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ROCHE PALO ALTO LLC, formerly known
as Syntex (U.S.A.) LLC, and ALLERGAN,
INC., a Delaware corporation,

Plaintiffs and Counter-Defendants,

v.

APOTEX, INC., a Canada corporation, and
APOTEX CORP., a Delaware corporation,

Defendants and Counter-Plaintiffs.

Case No.: 3:05-cv-02116-MJJ

**REQUEST FOR IMMEDIATE STATUS
CONFERENCE & ~~PROPOSED~~
ORDER**

The Honorable Martin J. Jenkins

1 Roche Palo Alto LLC (“Roche”) and Allergan, Inc. (“Allergan”) (collectively, “Plaintiffs”)
2 request that this case be reopened and that a status conference be scheduled immediately. Counsel
3 for Plaintiffs have discussed this request with counsel for Apotex, Inc. and Apotex Corp. (collectively
4 “Defendants”), and Defendants’ counsel agrees that an immediate status conference scheduled
5 immediately.

6 BACKGROUND

7 This is an action under 35 U.S.C. section 271(e)(2) for infringement and inducement of
8 infringement of U.S. Patent No. 5, 110, 493 (“the ‘493 patent”). Defendants are generic
9 pharmaceutical companies who have filed an Abbreviated New Drug Application (“ANDA”) 76-308,
10 through which they seek FDA approval to sell a generic 0.4% ketorolac tromethamine ophthalmic
11 formulation. Plaintiffs allege that Defendants’ filing of ANDA 76-308 infringes the ‘493 patent.

12 The parties have previously litigated another case involving Defendants’ infringement of the
13 ‘493 patent. That previous case concerned Defendants’ filing of ANDA 76-109, through which
14 Defendants sought FDA approval to sell a generic 0.5% ketorolac tromethamine ophthalmic
15 formulation, Case No. 3:01-cv-02214. In a Judgment entered on August 18, 2006, this Court found
16 that Defendants’ filing of ANDA 76-109 infringed the ‘493 patent and that the ‘493 patent was valid
17 and enforceable. The Federal Circuit recently affirmed the Judgment. Defendants currently have
18 pending before the Federal Circuit a motion to recall and stay the Federal Circuit’s mandate in Case
19 No. 3:01-cv-02214, and for an *ex post* extension of time to file a petition for rehearing (by panel and
20 *en banc*) of their appeal in that case.

21 *This* case was stayed while Case No. 3:01-cv-02214 proceeded in this Court and on appeal. It
22 appears, however, that the Court administratively closed this case.

23 Apotex has now indicated that it intends to litigate this case. Time is of the essence.
24 Defendants notified Plaintiffs of their filing of ANDA 76-308 on or about April 11, 2005. Therefore,
25 in the absence of (a) a decision that ANDA 76-308 infringes the ‘493 patent or (b) a preliminary
26 injunction prohibiting Defendants from engaging in the commercial manufacture or sale of the
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generic drug covered by ANDA 76-308, the Food and Drug Administration could potentially grant final approval of Defendants' ANDA 76-308 on October 11, 2007. *See* 21 U.S.C. §355(j)(5)(B)(iii).

Plaintiffs therefore request that the Court re-open this case and schedule an immediate status conference. Defendants do not oppose an immediate status conference, but—through counsel—have expressed a preference that such conference be held on a Tuesday or Wednesday.

Dated: May 25, 2007

HELLER EHRMAN LLP

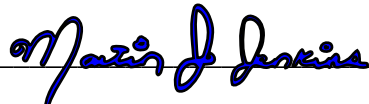
By /s/ Nathan E. Shafroth

Attorneys for Plaintiffs and Counter-Defendants
ROCHE PALO ALTO LLC and ALLERGAN, INC.

~~[PROPOSED]~~ ORDER

The Request for an Immediate Status Conference is hereby GRANTED. Counsel for all parties are ordered to submit a joint status conference statement on __ 6/1/07 or ASAP, and to appear before the Court for a status conference on __ Tues., 6/5/07 at 2:00 p.m.

Dated: 5/31/2007


MARTIN J. JENKINS
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF CALIFORNIA

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record, who are deemed to have consented to electronic service are being served this 25th day of May 2007, with a copy of this document via the Court's CM/ECF system.

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